Systems West LLC and Pacific Northwest Regional Council of Carpenters, Local 770. Cases 19–CA–27902, 19–CA–27953, and 19–RC–14200

August 25, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND MEISBURG

On April 25, 2003, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed exceptions. The General Counsel filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified and to adopt the recommended Order as modified.

I. THREAT OF JOB LOSS

We affirm the judge's finding that the Respondent's Supervisor James Ravine violated Section 8(a)(1) of the Act when he told employees that they would not be able to work outside the Yakima area and that most of them would be replaced if the company were unionized. Ravine's statements were not predictions based on objective fact, indicating his belief as to consequences beyond the Respondent's control. Instead, they were threats that the Respondent would retaliate against the employees if they chose union representation. *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969).

A. Facts

The Respondent constructs buildings for agricultural businesses in eastern Washington and Oregon. Yakima, Washington is where the company is headquartered and the home of most of its employees. When employees work outside the Yakima area, the Respondent pays for their rooms and gives them a stipend for travel and per diem.

In January 2002, in the context of a union-organizing effort, Ravine spoke to six employees at the Ione, Oregon jobsite. Ravine told them he had been a union member, and that if the company was unionized they would not be able to work jobs outside the Yakima area. As he testified, "We had a discussion about them working basically in the Yakima area. Because like I was saying, with the carpenter [hiring] halls closer and stuff, there was no point in us paying them to travel down there."

Ravine then asked the employees how they would be hired out of the union hiring hall. According to him, "nobody there had any idea." He then stated that because most of the Respondent's employees lacked the experience of journeymen carpenters, they would have to get quite of bit of training to go directly into a union as journeymen carpenters. Ravine also said that "it would be hard to justify paying these guys journeyman's wages when you can get journeymen that have the experience of a journeyman carpenter, because . . . most of our employees when we hired them had very little, if any, construction experience."

B. Analysis

The Supreme Court, in *Gissel Packing Co*., supra., established the framework for analyzing an employer's statements to employees concerning the effects that unionization will have on its operations. Thus, an employer is free to communicate his views about unionism in general or a particular union, "so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.'" 395 U.S. at 618, citing Section 8(c) of the Act. Predictions concerning the precise effects of unionization, however, "must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control." Id. The Court cautioned that

> If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment.

Id.

Applying these principles, we affirm the judge's finding that Ravine's statements to the employees at Ione were unlawful threats of retaliation rather than lawful predictions based on objective fact. Ravine's statements fail to meet both elements of a lawful prediction of the adverse consequences of unionization. That is, his statements were neither based on objective fact nor did they address consequences beyond the Respondent's control.

[1] Because they would not affect the Order, we find it unnecessary to pass on the judge's findings that Jorge Ibarra and Leonel Rosales were unlawfully interrogated and that Rosales was not a supervisor.

As the judge found, Ravine's prediction that the Respondent's current workers could not work outside the Yakima area if the company was unionized was simply incorrect. Ravine admitted that this statement was based on his assumption that local unions in other areas would want their own members working on local projects. He further admitted that a union official later told him that the Union had "total portability," allowing employers who are signatory to the Union's master agreement to take their employees to any jobsite covered by the master agreement.

The judge found "no record evidence that Ravine presented any evidence to the listening employees, justifying his contention that they would not qualify as journeymen carpenters, nor did Respondent present any evidence at the trial establishing that its employees were unqualified or inexperienced workers and not worth paying the journeyman's wage rate." Accordingly, we agree with the judge that the statement was not based on objective fact.

We also agree with the judge that the adverse consequences that Ravine predicted involved choices over which the Respondent would have either complete or partial control. Thus, as unionization would be no impediment to the employees' working outside Yakima, any decision to use employees from local hiring halls instead of its current employees would be the Respondent's alone. And, as the judge found, "the choice of paying its employees at a journeyman's wage rate or replacing them with workers, whom it requested from a Union hiring hall would be a decision solely within the control of Respondent." Ravine's statement that "I couldn't foresee paying the extra cost to take them to a jobsite out of the area when I could hire people locally and not have to pay the extra cost" indicates on its face that the Respondent would, *of its own volition*, inflict adverse consequences on its employees if they chose union representation.[2] See *NLRB v. Lenkurt Electric Co*., 438 F.2d 1102, 1106 (9th Cir. 1971).

Like the judge, we also reject the Respondent's argument that Ravine's statements were supported by a master labor agreement introduced into evidence at the hearing, which obliges the signatory employer to first employ individuals dispatched from union hiring halls. The Master Agreement does not establish the objective factual basis of Ravine's statement; nor do its term render the matters Ravine address beyond the Respondent's control.

First, Ravine neither informed his listeners nor testified at the hearing that his statements were based on any such agreement. The agreement cited by the Respondent was introduced only later, at the hearing, as a post hoc justification for Ravine's earlier statements.

Second, there is no evidence that the Respondent and the Union would be bound by this or any similar agreement. The contract does not apply to the area in which the Respondent operates; it is an expired agreement from an adjacent territory. Even if such a master agreement covered the Respondent's area of operations, the Respondent was not required to be a signatory to it.[3] Thus, any suggestion by Ravine that the Respondent would be contractually bound to hire first from union hiring halls, or to pay its employees at rates exceeding their productivity, ignored the reality that such provisions are neither inevitable nor immutable, but are merely terms that *may* result from collective bargaining, and thus are at least partly within the Respondent's control. See *Schaumburg Hyundai, Inc.*, 318 NLRB 449, 450 (1995) (even if union's standard contract provided for wages and working conditions predicted by employer, bargaining unit employees would not automatically be covered by such an agreement following negotiations).

Finally, the Respondent argues, inter alia, that *NLRB v. Lenkurt Electric Co.*, 438 F.2d 1102 (9th Cir. 1971), compels a finding that Ravine's statements were lawful. We disagree. In *Lenkurt*, employees approached the employer's printing department manager, Linka, and asked him for his views on unionization. Based on his experience under the employer's existing contracts with the petitioning union and other unions, Linka outlined a series of specific adverse changes that he thought would result. Linka's views were solicited by employees, made in an environment free of antiunion animus and unfair labor practices, and objectively based (primarily on his personal experience with the same employer). Id. at 1107.

In contrast, Ravine's comments were unsolicited and were made in a context of numerous unfair labor practices. Indeed, in the very same conversation, Ravine unlawfully threatened employees that the Respondent would "close the doors" in the event of unionization. Moreover, Ravine did not objectively describe the ob-

[2] Before the Union appeared on the scene, the Respondent was apparently willing to incur the costs of employing Yakima-based employees in other localities rather than hire locally through want ads, temporary agencies, or other sources. Ravine did not explain why the Respondent would suddenly seek to avoid those costs if the employees voted for union representation. His failure to do so is further evidence that his statements amounted to threats to retaliate against the employees rather than a prediction of the unavoidable consequences of unionization.

[3] Wayne Thueringer, an organizer with the Carpenters Union, testified without contradiction that "an employer does not have to become signatory contractors [sic] in order to have a contract with the Union. It can have a separate contract."

served consequences of unionization of his employer. Instead, he engaged in speculation based on assumptions about the way carpenters local unions would operate and on his experiences with different unions and different employers, some 16 years before the events in this case.[4] Finally, as found above, Ravine predicted as inevitable consequences that were either entirely under the Respondent's control or merely *possible* outcomes of collective bargaining.

In sum, Ravine's statements were not objectively based predictions of either the demonstrably probable consequences of unionization, but instead constituted exactly the kinds of threats of retaliation that *Gissel* proscribes. We therefore affirm the judge's findings that Ravine's statements violated Section 8(a)(1).

II. NOTICE POSTING AND MAILING

In the remedy section of his decision, the judge stated that he would order the Respondent to post the remedial notice on the wall of its office facility in Yakima and at its jobsites, and also to mail the notice to its former employees. However, the judge's recommended Order does not provide for mailing of the remedial notice to former employees. We shall modify the Order to correct this inadvertent omission. However, we reject the Charging Party's contention that the notice should also be mailed to current employees. We agree with the judge that such mailing is unnecessary.[5]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below, and orders that the Respondent, Systems West LLC, Yakima, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Within 14 days after service by the Region, post at its office facility in Yakima, Washington and at each of its current jobsites in the States of Washington and Oregon, copies of the attached notice (in English and in Spanish) marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. The Respondent shall mail copies of the notice to all former, but not current, employees employed by the Respondent at any time since January 9, 2002, at their last known addresses. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 9, 2002."

Dated, Washington, D.C. August 25, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Dianne Todd, Esq. and *Irene Hartzell-Botero, Esq.*, for the General Counsel.

Gary Lofland, Esq. (Lofland & Associates), of Yakima, Washington, for the Respondent.

Rocky Marshall, Organizer, of Yakima, Washington, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. The original and amended unfair labor practice charges in Case 19–CA–27902 were filed by Pacific Northwest Regional Council of Carpenters, Local 770 (the Union), on January 25, 2002 and February 13, 2002, respectively,[1] and the unfair labor practice charge in Case 19–CA–27953 was filed by the Union on February 4, 2002. After investigations of each of the above unfair labor practice charges, on June 28, 2002, the Regional Director of Region 19 of the National Labor Relations Board, issued a consolidated complaint, alleging that Systems West LLC (the Respondent), had engaged in, and continues to engage in, un-

[4] Before working for the Respondent, Ravine was a member of the Laborers Union, the Teamsters Union at Del Monte, and another union while working at U & I Sugar.

[5] In approving the judge's recommended remedy, we note the absence of a central bulletin board for the Respondent's operations and the absence of evidence that current employees were also employed at the time of the unfair labor practices found here.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] Unless otherwise specified, all events occurred during calendar year 2002.

fair labor practices within the meaning of Section 8(a)(1) of the National Labor Relations Act.[2] Respondent timely filed an answer, denying the commission of the alleged unfair labor practices. Thereafter, on November 5, 2002, the Acting Regional Director of Region 19 issued a report on challenges and objections in Case 19–RC–14200, and, on the same date, as several of the Union's objections were identical to the consolidated complaint allegations, issued an order consolidating the hearing on the said challenges and objections with the trial on the merits of the unfair labor practice allegations.[3] As scheduled, the merits of the consolidated complaint allegations, the parties' objections, and the challenged ballots came to trial before the above-named administrative law judge in Yakima, Washington on November 19, 20, and 21, 2002. At the said trial,[4] all parties were afforded the opportunity to examine and to cross-examine all witnesses, to offer into the record all relevant documentary evidence, to argue their respective legal positions orally, and to file post-hearing briefs. Counsel for the General Counsel and counsel for Respondent filed posthearing briefs, and these have been carefully considered.[5] Accordingly, based on the entire record, including my resolution of the credibility of the several witnesses and the posthearing briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a State of Washington corporation, with an office and place of business located in Yakima, Washington, where it is engaged in the business of constructing buildings. During the 12-month period which immediately preceded the issuing of the consolidated complaint, in the normal course and conduct of its above-described business operations, Respondent had gross revenues in excess of $500,000 and purchased and received goods and materials, valued in excess of $50,000, directly from suppliers located outside the State of Washington. Respondent admits that, at all times material, it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[2] During the trial of the consolidated complaint allegations, counsel for the General Counsel sought permission to amend the complaint by adding three additional allegations of violations of Sec. 8(a)(1) of the Act and withdrawing several other allegations. I granted counsel's motions to amend the consolidated complaint in the above regards, and counsel for Respondent denied the amendments to the consolidated complaint.

[3] Besides the Union's objections which were identical to the consolidated complaint allegations, set for hearing were the Union's five challenged ballots, which were determinative to the results of the election, and two objections, which did not correspond to consolidated complaint allegations and Respondent's objections to the conduct of the election.

[4] During the trial, the Union's representative withdrew the Union's challenges to the ballots of four voters and conceded the outcome of the election, rendering consideration of Respondent's objections nugatory. Further, the Union only presented evidence as to one of its objections, which did not conform to the allegations of the consolidated complaint.

[5] The representative of the Union chose not to file a posthearing brief due to "budget constraints" and other reasons.

II. LABOR ORGANIZATION

Respondent admits that, at all times material, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUES

The consolidated complaint alleges, and the General Counsel argues, that Respondent engaged in numerous acts and conduct, violative of Section 8(a)(1) of the Act. These include interrogating employees about their own union sympathies and activities and the union sympathies of their fellow employees and about their involvement in the filing of unfair labor practice charges; informing employees that they were not permitted to have union stickers or other items, indicating support for the Union, on their hard hats, clothing, or vehicles and warning employees that, if they did so, they would be terminated; threatening employees with termination by telling them that, if they chose the Union as their bargaining representative, they would only be able to work in the Yakima area, that many of them would not be qualified to work for Respondent on its jobsites, and that Respondent would hire new workers from the Union's hiring hall, thereby displacing them; threatening employees that, if they selected the Union as their bargaining representative, Respondent would close its doors and they would have to seek work elsewhere; demanding that employees remove union paraphernalia from their bodies and vehicles or leave their jobsite; threatening employees with termination by telling them that, if they desired to work for a union company, they should go work for one; warning employees that they could not engage in union activities on their jobsite; warning employees that, if they selected the Union as their bargaining representative, employees would only work a few months each year and Respondent would not have enough work to keep going; informing employees that selecting the Union would make Respondent less competitive and would force it to shut its doors; informing an employee that it had a good idea which employees were attending union meetings, and threatening employees with the futility of supporting the Union by stating it would never bargain with the Union, Respondent denied commission of any of the aforementioned alleged violations of Section 8(a)(1) of the Act.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent, a State of Washington corporation, is engaged in the business of constructing "Butler Buildings,"[6] primarily for employers engaged in various types of agricultural businesses in eastern Washington and Oregon. In this regard, Respondent "typically" performs all of the above ground construction work, including erecting the buildings, with its employees performing all construction craftwork except concrete and electrical work, which is subcontracted. The record establishes that Respondent's office is located in Yakima, Washington, that it

[6] These types of structures are steel buildings, which are constructed from prefabricated parts, engineered to the specifications of the purchaser, and bolted together by Respondent, mainly used in the commercial building industry.

normally has three or four construction projects in various phases of work; that its president is David Green and its treasurer is Tex Fredrickson; that it employs five project superintendent/supervisors (David Randall, James Ravine, Jose Betancourt, Ray Betancourt, and Neil Monoian),[7] who oversee its ongoing projects and report directly to him; and that, depending on the season and the amount of work, it employs an employee complement of between 20 and 60 workers, most of whom have been employed in excess of a year. The record establishes that the Union filed a representation petition and an amended petition with the Board in Case 19–RC–14200 on January 8 and January 14, 2000, respectively, seeking to represent Respondent's full-time and regular part-time construction employees; that the parties entered into a stipulated election agreement, which was approved by the Regional Director of Region 19 on January 22;[8] that the representation election was conducted by the Board on February 15; and that the tally of ballots showed that 11 votes were cast in favor of representation by the Union, 15 were cast against representation, and five votes were challenged. The record further establishes that, during the critical period between the filing of the election petition and the day of the election, Respondent had employees working on jobsites in Ione, Oregon, and in Othello, Riverside, and Union Gap, Washington,[9] and that alleged violations of Section 8(a)(1) of the Act occurred at each of these locations as well as at Respondent's office facility in Yakima.

B. Statements made at Respondent's Magic Metals jobsite in Union Gap, Washington

At all times material, in Union Gap, Washington, Respondent was engaged in the construction of an "extension" to the back building of the facility owned by Magic Metals, a precision sheet metal company. Henry Les Sutton, who worked as a laborer for Respondent from 1997 until February 2002, testified that, one day in the second week of January, he arrived for work at approximately 7:45 a.m. and discovered that Superintendent Dave Randall was already holding a meeting with the other members of his work crew.[10] "I walked up and . . . Randall said this is how Dave Green feels about the matter. If you have union stickers on your vehicles, you need to either peel them off or park . . . off the premises. If you have union stickers on your hard hat, you need to either remove them or go home."[11] Louis Gelderman, a welder for Respondent from early December 2001 until late January 2002,[12] testified that at 7 a.m. in the morning on January 23, Randall held a meeting with the employees at Respondent's jobsite at the Magic Metal's facility. According to Gelderman, immediately after speaking to David Green by telephone, Randall ". . . called us all into a group" and ". . . told us we had to take off our stickers or we would be sent home. . . . Also, he told one of the guys that had a sticker on his car that he had to remove his off the premises" and "that we weren't allowed to wear the stickers or do any Union activity."[13] Also, superintendent Neil Monoian, who served as concrete foreman on the Magic Metals project, admitted that, on January 23, he had lunch with Respondent's construction crew there and, in the midst of eating,[14] told them ". . . that if they wanted to go work for the Union, they should go get a Union job." During cross-examination, Monoian admitted uttering the above comment in response to an employee question regarding what he thought about the Union and responding that he did not "really care for the Union . . . ."

Respondent admitted that it placed a restriction, regarding the display of union stickers or like paraphernalia, at its Magic Metals jobsite but asserted such was "at the insistence of the customer." In this regard, Randall testified that, in January, he had a conversation with Dave Green regarding Union materials on its jobsites. "The work site in question was Magic Metals, and, at the time, the owner of that company had just been through his union dealings, and it was at his request that [Green] did not allow any Union paraphernalia on the job." However, Randall was impeached on this point by his pretrial affidavit wherein he stated, "At some point, I had a conversation with Dave Green.[15] He told me not to allow any Union stickers on hard hats or vehicles on our work sites." With regard to this subject, while denying he prohibited the affixing of union stickers to company hard hats on any of Respondent's jobsites, David Green testified, "What I said was the Union was not allowed to come on a work site on private property and organize. We had a specific request from Magic Metals because of prior activity that they did not allow any union organization or propaganda on their site. So I restricted that on that site."[16] However, as was Randall, Respondent's president was impeached by his pretrial affidavit wherein he stated that, after Randall telephoned him about union activity on the Magic Metal jobsite, he told Randall employees could neither wear hats, stickers, or buttons, for or against the Union, on the Magic Metals jobsite nor have such stickers on their cars on the jobsite and that he and Tex Fredrickson ". . . then talked to the other

[7] Respondent admitted that Ravine, Randall, Jose Betancourt, and Monoian are supervisors within the meaning of Sec. 2(11) of the Act.

[8] With regard to the election notices, said stipulated agreement sets forth the following standard language—: "Copies of the Notices of Election shall be posted by the Employer in conspicuous places and usual posting places easily accessible to the voters at least three (3) days prior to . . . the day of the election. . . ."

[9] Apparently, Union Gap is located next to Yakima, Washington.

[10] These employees included Louis Gelderman.

[11] At the time, Sutton's hard hat, which was given to him by Respondent, was covered by all types of stickers, including some supporting the Union and others bearing logos of suppliers and equipment manufacturers. These stickers varied in size from "an inch to five inches."

[12] He was laid off.

[13] Like Sutton, Gelderman had covered his hard hat with logo stickers, including some supporting the Union and one bearing the call letters of a radio station.

[14] While stating that he normally ate lunch with the construction crew employees, asked if he maintained his supervisory formality while eating lunch with his crew, Monoian replied, "Pretty much."

[15] When, as herein, pretrial affidavits of witnesses were utilized for impeachment purposes, what is stated in the affidavit is not evidence unless the portion has been adopted by the witness at the hearing as truthful testimony.

[16] David Green failed to testify as to a specific request from a Magic Metals principal. In this regard, I note that, in his pretrial affidavit, which is not evidence in this proceeding, Green mentioned a telephone conversation with a "Gary" Griggs 2 years before the events at issue.

superintendents and told them that no one could wear any stickers, hats, et cetera, either pro or con, about the Union on any work site."[17]

Louis Gelderman testified that the day after Randall explained Respondent's restriction on Union stickers, January 24, David Green came to the Magic Metals jobsite and met with Respondent's construction crew "in the middle of the pad" at approximately 2:30 in the afternoon. Green "waved" all the employees to come to where he was standing, and "he asked us why do you want to go Union."[18] Green ". . . told us that the Union was a bunch of shit, and they were filling our heads with a bunch of lies. . . . He told us that, if the Union activity kept up, Magic Metals would forfeit their contract and that would force [him] to shut his doors." "Guys spoke up, saying they wanted better lives for their families and kids. [Henry Sutton] said he wanted better benefits and pay. Green responded that he provided benefits for his employees."[19] Superintendent Dave Randall admitted being present for this meeting, and further admitted that Green ". . . asked the employees why are you doing this with the Union" and told them if they wanted to work for a union company, "why don't you go work for one" and "the doors are open, We're not holding anyone hostage." David Green admitted meeting with Respondent's employees at the Magic Metals jobsite on January 24. During direct examination by counsel for the General Counsel, he recalled telling the employees that, if he had to raise costs to meet union costs, Respondent would ". . . have less clients to work for" and that ". . . the company could not go Union and be competitive." Green also admitted saying to the employees that, "if they wanted [a] Union and they wanted quick results . . . we didn't take captives. . . . They were free to do whatever they wanted to do. They could go to a Union job if they wanted to."[20]

Employees Sutton and Gelderman were uncontroverted that Superintendent David Randall threatened Respondent's employees with termination if they displayed union stickers on their hard hats and vehicles at its jobsite at the Magic Metals plant, Respondent admitted that it prohibited its employees from displaying union stickers on their hard hats and on their vehicles at that jobsite. Relying upon two recent decisions of the Board which found the prohibiting of union stickers on hard hats unlawful,[21] the General Counsel contends that Respondent engaged in conduct, violative of Section 8(a)(1) of the Act, when Superintendent Randall threatened employees in the above manner. In this regard, it is well settled that, in the absence of special circumstances, an employee's wearing of union buttons or stickers while at work is protected activity under Section 7 of the Act. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945); *Burger King Corp.*, 265 NLRB 1507 at 1507 (1982). Examples of special circumstances include maintenance of production and discipline, safety, preventing discord and violence between competing groups of employees, and preventing alienation of customers. *Eckert Fire Protection*, 332 NLRB 202 (2000). In the latter circumstance, mere contact with customers may not serve as a basis for barring the wearing of union buttons or stickers, and, absent substantial evidence that a prounion sticker or button affected a respondent's business, requiring the removal of such "small, nonproactive" items is unlawful. *Burger King Corp., supra*. While Respondent asserts that, by prohibiting the display of union stickers by its employees on Magic Metals' property, it was merely responding to Kevin Griggs' demands and appeasing a customer, who was threatening to abrogate a contract, I find Respondent's defense not to be credible. Thus, David Green failed to corroborate Griggs as to any specific conversations, regarding union activity on the Magic Metals property in January, and, if Griggs is to be believed, his discontent appears to have been directed toward the presence of union "agitators" on his property and any attendant liability and not toward inconspicuous union buttons or stickers worn by Respondent's employees. Thus, I think Respondent's reaction, prohibiting its employees' display of "small, non-proactive" union stickers on their hard hats and personal vehicles, was excessive when balanced against the Section 7 rights of its employees. Moreover, both David Randall and David Green, each of whom testified that

[17] According to Kevin Griggs, the owner of Magic Metals, on one occasion, while attempting to organize Respondent's employees, Union "instigators" were "actually standing inside the parking lot of the Magic Metals facility"; "the problem was that they in far enough on the parking lot that they were around . . . . our own employees' cars" and ". . . we had cigarette butts all over the parking lot . . . ." Upset at what occurred, Griggs telephoned David Green and "I basically told Dave that we were tired of it, and . . . . I explained to Dave either somehow we found out a way to get those people off of there or I was going to bring somebody else in to do the job" and ". . . that we needed to figure out how the Union was not going to be on our property." Apparently, although not entirely clear from Griggs' rather confusing testimony, the latter had a second conversation with Green during which he told Green ". . . if there is any sign of the Union out here in any way, that he was going to be set off the job." Griggs added that his concern was the "people organizing, signs anything. . . . we wanted nothing there that had anything to do with the Union" and that his "whole issue" was liability caused by the union organizers presence on his property.

[18] Testimony regarding this question was received as past recollection recorded.

[19] While Gelderman recalled Sutton being present and responding to Green's question, Sutton offered no testimony regarding this meeting.

[20] During cross-examination by Respondent's counsel, asked about the entire conversation with Respondent's employees, Green stated that he held the meeting because of the union organizing and that he told the employees ". . . that because we worked in agriculture . . . we would not be able to pay the wages that the Union had presented to them." He testified that he based his statement on R. Exh. 1, a document which delineates the Union's contract wage rates for the central Washington area in all job classifications in January 2002 and that he told the employees that, given the Union's published wage rates, which, at the hearing, he asserted were $25 or $30 an hour, "we would not be able to be competitive" in the agriculture market and that ". . . if we had to pay these wages we would probably lose at least half of the jobs . . . we were working on . . . ."

With regard to whether Respondent would have been bound to accept the published wage rates in any collective-bargaining agreement, which was negotiated between itself and the Union, Wayne Thueringer, an organizer for the Union denied that all signatory contractors pay the published wage rates, which are those contained in its master labor agreement, and testified that, while the Union would initially seek the published rates, it has "hundreds" of agreements with contractors, who have negotiated different wage scales.

[21] *Hansen Aggregates Central, Inc*., 337 NLRB 882 (2002); *Mingo Logan Coal Co.*, 336 NLRB 97 (2001).

Respondent's prohibition was site specific to Magic Metals, were impeached by their respective pretrial affidavits wherein each stated that Respondent's prohibition extended to all of its on-going projects and was not site specific. In these circumstances, given that the Board has recently found almost identical employer conduct unlawful, I find that Respondent's prohibition, and threat of discharge, directed to its employees' display of union stickers on their hard hats and vehicles at the Magic Metals project to have been volatile of Section 8(a)(1) of the Act. *Hansen Aggregates Central, Inc.*, supra; *Mingo Logan Coal*, supra. Likewise, Randall failed to controvert employee Gelderman's testimony that, besides the display of union stickers, he (Randall) extended Respondent's prohibition to "any Union activity" on the Magic Metals property. Clearly, said prohibition was not limited to Respondent's employees' working time but, rather, extended to its employees' break times and lunch periods and was, therefore overly broad. In the absence of a legitimate business reason for such an absolute prohibition, Randall's prohibition was violative of Section 8(a)(1) of the Act. *Golub Corp.*, 338 NLRB No. 62 (2002).

Next, with regard to superintendent Neil Monoian's admitted comment to the construction crew employees at Respondent's Magic Metals jobsite, ". . . that if they wanted to go work for the Union, they should go get a Union job," the General Counsel alleges that Respondent thereby violated Section 8(a)(1) of the Act, and I agree. In my view, such a comment is an oblique threat of discharge, and the Board has consistently held that an employer's suggestion to its employees that union supporters, who are dissatisfied with their terms and conditions of employment, should seek work elsewhere is coercive and violative of the Act. *Hansen Aggregates Central, Inc.*, supra at 5; *General Fabrications Corp.*, 328 NLRB 1114, 1120 (1999); *Tualatin Electric*, 312 NLRB 129, 134 (1993). Of course, Monoian exacerbated the coercive effect of his remark by expressing his own negative thoughts about the Union prior to making his comment.. In these circumstances, I conclude that his suggestion to the employees on his construction crew was, in effect, an unlawful threat of discharge and that Respondent, thereby, engaged in conduct, violative of Section 8(a)(1) of the Act.

Turning to the meeting held by David Green with Respondent's Magic Metals construction crew on January 24, Dave Randall admitted that Green commenced the meeting, asking the employees ". . .why are you doing this with the Union," which corroborated the testimony, received as past recollection recorded, of Louis Gelderman that Green began with the question, ". . .why do you want to go Union?" Also, I find that Green failed to deny Gelderman's testimony, which I credit, that, during his speech, he warned the employees ". . . if the Union activity kept up, Magic Metals would forfeit their contract and that would force [him] to shut his doors." Further, Randall admitted Green told the employees that, if they wanted to work for a Union company, "why don't you go work for one" and "the doors are open. We're not holding anyone hostage." Green admitted making a similar statement during his speech, testifying he said to the employees that, if they wanted [a] Union and they wanted quick results . . . we don't take captives. . . . They were free to do whatever they wanted to do. They could go to a Union job if they wanted to." Finally, Green admitted telling employees that, based on the Union's published master labor agreement wage rates, if he had to raise costs to meet Union costs, Respondent would ". . . have less clients to work for" and that ". . . the company could not go Union and be competitive" in the agriculture market.

The General Counsel alleges that Green's questioning of the employees at the outset of his speech constituted interrogation, violative of Section 8(a)(1) of the Act. In this regard, In *Rossmore House*, 269 NLRB 1176, 1177 (1984), the Board announced a test for determining whether an interrogation was violative of Section 8(a)(1) of the Act—"whether under all the circumstances the interrogation reasonably tends to restrain, coerce, or interfere rights guaranteed by the Act." In *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1219 (1985), the Board delineated some of the circumstances to be considered—whether the employee was an open and active supporter of the union, the background, the nature of the information sought, the identity of the questioner, and the place and method of interrogation. Herein, the interrogation, by Respondent's president occurred against a background of unfair labor practices, including prohibiting them from engaging in union activities and suggesting that union supporters work elsewhere; there is no evidence of a legitimate purpose to Green's question; and his question was directed to employees, about whom there is no evidence that any were open and avowed supporters of the Union. In the foregoing circumstances, considering all the surrounding circumstances, including the remainder of Green's speech, which I shall discuss below, I do not believe that Green's question was the sort of casual question, reflecting the realities of the workplace, which the Board condoned in *Rossmore House, supra*. Rather, it was coercive and violative of Section 8(a)(1) of the Act. *Jefferson Smurfit Corp.*, 325 NLRB 280, 285 (1998). Next, regarding Green's threat that, if the employees continued their union activities, Magic Metals would forfeit their contract, which would force Respondent to shut its doors, I have previously concluded that what the owner of Magic Metals was concerned about was outside union supporters entering his property and not the union activities of Respondent's employees themselves. Thus, I believe that Green's statement, regarding Magic Metals, was disingenuous and that his comment to Respondent's employees was a blatant threat of business closure intended to coerce them to cease any support for the Union. In this regard, the Board has long held that threats of business closure are coercive and violative of Section 8(a)(1) of the Act. *Hanson Aggregates Central, Inc.*, supra at 12 *Feldkamp Enterprises*, 323 NLRB 1193, 1200 (1997); *Frances House, Inc.*, 322 NLRB 516, 523 (1996).

Next, both Randall and Green admitted the latter informed Respondent's construction crew employees at Magic Metals that, in Randall's words,[22] if they wanted to work for a union company, "why don't you go work for one" and "the doors are open. We're not holding anyone hostage." As stated above, contrary to Respondent's counsel, any suggestion by an employer to its employees that union supporters, who express dissatisfaction with their terms and conditions of employment,

[22] Green's admitted comments are virtually identical to Randall's admission and, I believe, the clear meaning of both is the same.

should, or are free to, seek employment elsewhere imparts a clear connotation of coercion, which the Board finds unlawful. *General Fabrications Corp.*, supra; *Tualatin Electric*, supra. Further, Green's comment mirrored that of Monoian the day before and reinforced the unmistakable message that Respondent did not want Union supporters as employees and that any such individuals should leave. Green's comment clearly was coercive and violative of Section 8(a)(1) of the Act. Finally, as to Green's statement that, based upon the Union's published wage scale, if Respondent was forced to raise its costs to meet the costs, under a Union contract, it would have fewer customers and would not be competitive in the agricultural construction market, the General Counsel alleges that this statement constitutes a threat of job loss in violation of Section 8(a)(1) of the Act. Contrary to the General Counsel, Respondent argues that Green's statement was a prediction "based upon objective fact," the Union's published wage scale, and Green's knowledge of the agricultural market. In its seminal *NLRB v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969) decision, the Supreme Court held:

> [A]n employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union , so long as the communications do not contain a 'threat of reprisal or force or a promise of benefit.' He may even make a prediction as to the precise effect he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization.

The Board has held that the burden of proof is upon the employer to demonstrate that its predictions are based on objective fact. *Schaumburg Hyundai, Inc.*, 318 NLRB 449, 450 (1995). While Green referred to the published wage scale while speaking to Respondent's assembled employees and the said wage scale is in the record, the Board has also held that the above-quoted *Gissel Packing Co.* language should not be read as permitting an employer to leap from the unproven premise that a union's wage scale is fixed and immutable to the conclusion that the company would be noncompetitive and would lose business. *Debber Electric*, 313 NLRB 1094, 1097 (1994). Likewise, in *Schaumburg Hyundai*, supra, the Board noted that, even assuming a union's standard agreement contains the provisions, which the employer predicts, it does not follow that a collective-bargaining agreement, between the employer and the union, will "automatically" contain the same provisions. In this regard, union organizer Thueringer's testimony was uncontroverted that "hundreds" of contractors have negotiated collective-bargaining agreements, which contain different wage rates than those set forth in the Union's master labor agreement. Therefore, it is apparent that Green prefaced his prediction with just such an unproven premise (Respondent would be required to pay its employees at the published wage rates), and, in such circumstances, conveyed an unspoken, but clear, threat to Respondent's employees that voting in favor of the Union would lead to the loss of jobs. Such a threat is patently violative of Section 8(a)(1) of the Act. *Grand Central Partnership*, 327 NLRB 966, 970–971 (1999).

C. Statements made to Employees at Respondent's Ione, Oregon Jobsite

Respondent has been engaged in the construction of a dairy building in Ione, Oregon, with James Ravine acting as the project superintendent and Jose Betancourt acting as the foreman over Respondent's construction crew there, since the fall of 2001. While its employees are working on this project, Respondent pays travel pay between Yakima and Ione and pays for their housing at the latter location. Ravine testified that one of Respondent's employees on the Ione jobsite was Jorge Ibarra, and Ravine admitted, on one occasion,[23] ". . . asking him what is going on with the Union?" There is no record evidence of the circumstances surrounding the interrogation, and Respondent failed to offer evidence that Ibarra was an avowed supporter of the Union or that Ravine suspected Ibarra of such sympathies. Also, there is no record evidence that Ravine and Ibarra had ever previously discussed the Union, no evidence of any social relationship between Respondent's superintendent and Ibarra, and no evidence that Ravine assured Ibarra there would be no reprisals whatever his response. Jose Betancourt admitted that, in January, Ravine instructed him to tell the workers on his crew that, if they had union stickers on their vehicles, to no longer park them on the customer's property and that they could no longer wear any union material on the jobsite. Thereafter, according to Betancourt, he relayed Ravine's instructions to the employees and added ". . . that, if they didn't remove their Union material . . . the company would consider them to have quit their employment with [Respondent]."[24] Betancourt further admitted that, a couple of weeks prior to the day of the election, he told the employees on his crew ". . . that the company would have to shut its doors if the Union came into the company . . . ."[25]

James Ravine testified that, in January, he visited the jobsite and walked into the job shack where Respondent's six construction employees were having lunch. Ravine ". . . asked them what the Union was offering them," regarding "anything," and, during the ensuing conversation, he told the employees that, if they chose the Union, they would only be working Yakima jobs because they would be working out of the Union's hiring hall in that city. He added that for jobs out of the

[23] Although the consolidated complaint alleges this incident occurred on January 14, the record evidence vaguely places the conversation "around January."

[24] Ravine admitted telling Betancourt ". . . to tell his employees that there couldn't be any Union paraphernalia on the jobsite and that cars with Union stickers needed to be moved off the jobsite. During cross-examination, Betancourt testified that Ravine explained that "the farmer from the dairy that we were building over there, he didn't want Union people there on the site on his place." Ravine failed to corroborate Betancourt's testimony in this regard.

[25] During cross-examination, Betancourt testified that he uttered this warning to the employees, on his crew, during lunch one day and that what he said was that, ". . . if the Union came in . . . the Company couldn't afford a union, it could be shut down, and everybody is going to go look for work, even me. . . . I told them I really want to go with the Union with you guys, too. If you guys want a union, I can go, too."

Yakima area, such as Ione, ". . . there is a local hall there. [Respondent] would expect to use the employees out of the local hall."[26] Also, Ravine told the construction crew employees ". . . it would be hard to justify paying these guys journeyman's wages when you can get journeymen that have the experience of a journeyman carpenter because most of our employees don't." He continued, saying Respondent really only employed "a couple of people," who had journeyman experience. Finally, during the conversation, Ravine mentioned that Dave Green and Tex Fredrickson did not like the Union and that, if Respondent did go Union, the company would have to close the doors because it couldn't afford to do so, having to ". . . bid with Union scale and with Union benefits . . . ." At that point, he asked the employees if anyone had questions, and, while he could not recall particular questions, he did recall answering a question regarding work stoppages—"I think I told them that the Union would enter into a work stoppage . . . ." During cross-examination, Ravine said, "I was just asked them what the Union was offering. I wanted them to let me know. I just told them that the Union is going to take and paint . . . a rosy picture of how things are going to be." He also asked the employees about what questions they had posed to union officials and what the union agents had said in response. Further, Ravine asserted he made points that most of the employees did not have enough experience to be hired from the Union's hiring hall as journeymen;[27] that they would probably not work on jobs outside the Yakima area ". . . because there are other locals and we would call people out of those locals instead of having people travel with us and pay them travel pay;"[28] and that, as most of Respondent's jobs were prevailing wage jobs based on ironworkers' prevailing wages and benefits, ". . . we would probably . . . use ironworkers instead of carpenters because I don't think they could cross the scale that way."[29] Also, Ravine mentioned he did not believe Respondent would be competitive bidding against nonunion companies because using union wages and benefits would make it "prohibitive" to bid the agricultural work, for which Respondent bids.

The consolidated complaint alleges that James Ravine's admitted interrogation of employee Ibarra (". . . what is going on with the Union?") was in violation of Section 8(a)(1) of the Act. As stated above, the test for whether an interrogation violates the Act is ". . . whether under all the circumstances the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act." *Rossmore House*, supra. While I note that there is no record evidence regarding the circumstances surrounding the alleged unlawful interrogation and perhaps Ravine's questioning of Ibarra was casual in nature, utilizing the above analytical framework, I am convinced that Ravine's act was coercive in nature. Thus, Respondent offered no evidence that Ibarra was a known supporter of the Union or that Ravine suspected him of harboring Union sympathies. Further, the instant interrogation was accomplished by a high-ranking management official, and, given that Respondent offered no evidence that the two individuals were social friends, it appears that there was nothing more between them than a supervisor-employee relationship. Finally, as has been previously found and shall be discussed infra, Ravine's interrogation of Ibarra occurred in the midst of other unlawful acts and conduct committed by supervisors of Respondent, including conduct attributed to Ravine, and the latter gave Ibarra no assurances against reprisals. In these circumstances, Ravine's seemingly innocuous but astucious interrogation interfered with Ibarra's right to support a labor organization in violation of Section 8(a)(1) of the Act. *Grouse Mountain Lodge*, 333 NLRB 3328 (2001); *Advance Waste Systems*, 306 NLRB 1029 (1992).

Next, the General Counsel contends that Foreman Betancourt engaged in two violations of the Act. First, the consolidated complaint alleges that Betancourt's act, informing Respondent's construction crew in Ione that personal vehicles, upon which union stickers had been placed, could no longer be parked at Respondent's jobsite and they could no longer wear union material on their clothing and that, if employees did not remove such union-related material, Respondent would consider them to have quit their employment with Respondent, was violative of Section 8(a)(1) of the Act. I find merit in this allegation. As stated above, the Board has recently found almost identical employer conduct unlawful in *Hansen Aggregates Central, Inc., supra*, and in *Mingo Logan Coal, supra*. Further, any contention that Respondent's supervisors were responding to a contractor request is not credible. Thus, I note that, while James Ravine confirmed telling Betancourt to prohibit Respondent's employees at the Ione dairy project from wearing union stickers on the jobsite or placing such paraphernalia on their vehicles, he failed to corroborate Betancourt's assertion that the former told him the owner of the dairy, at which Respondent

[26] According to Ravine, ". . . I assume the local halls would want their people working locally."

[27] Later, Ravine testified that he told the employees they would be called to jobs off of a "list" and that they would be classified as journeymen or apprentices.

[28] Asked how many jobs in Yakima Respondent had at the time, Ravine answered, "I'm not sure if we had any." While conceding he did not base what he said to the employees on anything he read, Ravine based his comment on his experience with the "Tri Cities" Laborers local union, whose members would be called for jobs in the Tri Cities and would not take jobs in the Yakima area. Further, Ravine said he did speak to Rocky Marshall, the Union's representative at the trial and an organizer for the Union, who told him that employees were permitted to travel with the company but that ". . . we have to pay the costs of them going out to the other areas . . . ." On this point, Ravine stated that ". . . it would cost us extra, and why would we incur the extra expense when you should be able to get people of the same caliber from the same local or from a local close by."

With regard to using a company's own personnel to work in geographical areas outside the geographical area of the Carpenters local union to which they belong, article 5, section 6 of the Carpenters master labor agreement states, "Whenever the employer requires carpenters covered by the agreement on any job, the employer shall request referral of such carpenters from the local union having jurisdiction." Nevertheless, Wayne Thueringer testified that, pursuant to the master labor agreement, employees of signatory contractors have "total portability," which enables signatory contractors to take their employees to any jobsite within the territorial jurisdiction of the master labor agreement

[29] After I pointed out to Ravine that prevailing wage jobs were normally public sector construction projects and asked what that had to do with Respondent, which normally did agricultural work, Ravine said ". . . we didn't do just dairy work."

was working, had requested the above prohibition, and there is no direct evidence of such a request by the owner of the Ione dairy. Moreover, David Green asserted that Respondent's ban on wearing and displaying union stickers was site specific to the Magic Metals project and never mentioned a request for such from the owner of the dairy in Ione. In these circumstances,[30] I believe that Betancourt's threat of discharge to Respondent's employees for displaying union paraphernalia on the jobsite in Ione was violative of Section 8(a)(1) of the Act. *Hansen Aggregates Central, Inc.*, supra; *Mingo Logan Coal*, supra. The consolidated complaint also alleges Betancourt's admission, that, a couple of weeks prior to the election, he told employees on Respondent's construction crew in Ione ". . . the company would have to shut its doors if the Union came into the company," was likewise violative of Section 8(a)(1) of the Act. There can be no question, no matter how he phrased his words and no matter his relationship with his crew, that Betancourt's comment constituted a blatant threat of business closure intended to coerce Respondent's employees from continuing their support for the Union, and, as stated above, the Board has long held such threats to be violative of the Act. I have concluded that an almost identical threat, uttered by David Green to Respondent's employees at its Magic Metals jobsite, was unlawful, and, likewise, I conclude that Betancourt's admitted warning was violative of Section 8(a)(1) of the Act. *Hansen Aggregates Central, Inc.*, supra at 12; *Feldkamp Enterprises*, supra*; Frances House, Inc.*, supra.

Turning to James Ravine's lunchtime meeting with Respondent's construction crew at the dairy project in Ione, the consolidated complaint alleges that, on said occasion, Ravine unlawfully interrogated the employees and unlawfully threatened them with job loss and closure of the business. With regard to the former, Ravine admitted prefacing his comments by asking the assembled employees what the Union was offering them, regarding "anything," what questions they had asked of union officials, and what the Union agents had told them in response. As set forth above, pursuant to *Rossmore House, supra*, whether interrogation of employees is unlawful depends upon the circumstances surrounding the questioning. While counsel for Respondent asserts that Ravine's questions were merely ". . . asked in an effort to encourage questioning and discussion," I note that Ravine's questions were posed against a background of blatantly coercive acts and conduct by Respondent's highest level management officials and supervisors at other jobsites and at the Ione dairy project and, as will be discussed, were accompanied by blatantly coercive comments by him. Further, contrary to counsel, the types of questions, asked by Ravine, a superintendent, may well have revealed the union sympathies of those who responded. In short, I believe that, in the context of Respondent's concurrent unlawful acts and conduct during the preelection period, Ravine's questions were coercive and violative of Section 8(a)(1) of the Act.

As to the alleged unlawful threats of job loss, counsel for the General Counsel specifies Ravine's admitted comments that, if the employees selected the Union as their bargaining representative, they would be limited to working in the Yakima area and, for jobs outside of the Yakima area, Respondent would utilize workers dispatched from the out-of-town union locals and, as it employed only a "couple" of employees with journeyman's experience, Respondent would not be able to justify paying its current workers at the journeyman's wage rate when it could replace them with more experienced journeymen carpenters from the Union's hiring hall. Regarding Ravine's initial comment, which counsel for the General Counsel contends is coercive and threatening but which counsel for Respondent characterizes as a prediction based upon his prior experience and the language of the Carpenters master labor agreement, the coercive effect of his statement seems palpable inasmuch as, at the time, Respondent had no on-going jobs in Yakima. Further, at one point, Ravine conceded that the basis for his statement was merely his assumption ". . . that the local halls would want their people working locally." Finally, while Ravine was uncontroverted that he actually told Respondent's listening employees they would be limited to working in the Yakima area ". . . because there are other locals and we would call people out of those locals instead of having people travel with us and pay them travel pay," and while he later learned the Carpenters would permit Respondent's workers to have "total portability," I do not believe his statement may be characterized as a lawful prediction, for, as set forth in *Gissel Packing*, supra, in order to qualify as such, it must be established that the asserted "prediction" was based upon objective facts as to probable consequences beyond Respondent's control. A future decision, regarding whether to utilize its own employees on out-of-town jobs and pay travel costs or to use employees, referred from the Carpenters local union, which has territorial jurisdiction, and not pay travel costs, clearly would be a choice over which Respondent, rather than a third party, would have absolute dominion. Therefore, in all the above circumstances, Ravine's statement was tantamount to a threat of job loss and was precisely the type of statement, prohibited by *Gissel*. Accordingly, Ravine's threat was violative of Section 8(a)(1) of the Act. *Grand Central Partnership*, supra. Concerning Ravine's admitted comment, denigrating the skill level of most of Respondent's current work force and suggesting, if the employees selected the Union as their bargaining representative, that paying them journeyman's wage rates could not be justified and that they could be replaced by more experienced journeymen from the Carpenters hiring hall, counsel for the General Counsel argues that, rather than being a prediction, said comment was a threat as it was not based upon any objective facts. Counsel for Respondent asserts that the General Counsel's contention is wrong as it is based upon "superficial analysis." However, there is no record evidence that Ravine presented any evidence to the listening employees, justifying his contention that they would not qualify as journeymen carpenters, nor did Respondent present any evidence at the trial establishing that its employees were unqualified or inexperienced workers and not worth paying the journeyman's wage rate. Further, it appears that the choice of paying its employees at a journeyman's wage rate or replacing them with workers, whom it requested from a union

[30] I agree with counsel for the General Counsel that, even if the owner of the dairy in Ione had made a request, Betancourt's threat would have been unlawful. *Island Creek Coal Co.*, 279 NLRB 858 at fn. 2 (1986).

them with workers, whom it requested from a union hiring hall would be a decision solely within the control of Respondent. In these circumstances, as the fate awaiting its employees was Respondent's to determine, the plain implication of Ravine's statement was that the employees, working at Respondent's Ione jobsite would lose their jobs if they selected the Union as their bargaining representative. Accordingly, I find this statement, by Ravine, likewise to have been a blatant threat of job loss, violative of Section 8(a)(1) of the Act. *D.J. Electrical Engineering*, 303 NLRB 820, 823–824 (1991); *Meehan Truck Sales, Inc.*, 201 NLRB 780, 784 (1973).

With regard to Ravine's alleged threat of business closure, counsel for the General Counsel points to Respondent's superintendent's admission that he told the Ione employees that, if they did select the Union as their bargaining representative, the company would have to close its doors because it could not afford to bid jobs, being tied to the Union's pay scale and other benefits, and argues that said statement was a threat of business closure in violation of Section 8(a)(1) of the Act. Noting that, during cross-examination, Ravine stated that he told the listening employees that Respondent would not be competitive if having to bid union wages and benefits, counsel for Respondent argues that Ravine was merely making a prediction based upon an objective fact. Contrary to counsel for Respondent, I have previously discussed the Board's holding in *Debber Electric*, supra, wherein the Board stated that an employer may not jump from the unproven premise that a union's pay scale is fixed and immutable to a conclusion that it may have to shut down the business and convey this to its employees. Moreover, even assuming the Union's master labor agreement specified certain wages and benefits, Ravine's statement to Respondent's employees failed to take the collective-bargaining process into account; it does follow that a collective-bargaining agreement , between Respondent and the Union, would contain the same provisions. *Schaumburg Hyundai, Inc.*, supra. Accordingly, as Ravine's admitted comment ignored the reality and effects of collective bargaining, his statement constituted a blatant threat of business closure if employees selected the Union as their bargaining representative in violation of Section 8(a)(1) of the Act.. Id*; Famet, Inc.*, 202 NLRB 409, 419 (1973).

D. Statements made to Employees at Respondent's Othello, Washington Jobsite

In January, Respondent was engaged in the construction of a small building at the Johnson's Fertilizer plant in Othello, Washington. Employee, Henry Sutton, testified that, one day in the first week of the month, he overheard a conversation between Superintendent David Randall and the "senior person" on the job, Leonel Rosales.[31] As Sutton approached Randall, the latter was speaking to Rosales, who was working above Randall on a "scissor lift." Sutton stopped 5 feet from Randall, who glanced over to Sutton and continued his conversation. "He was telling Leonel about the Union guy coming to the office. He was saying that [Respondent] would probably have to close their doors if we went union, and he didn't want to work union, and, if he had a union job . . . he would have went out and found [one]. He said . . . that 'it might be all right for you guys, but it wouldn't work out for the Mexicans.` Then, he also said that he had a good idea who was attending the Union meetings and that their initials were ROB and then he glanced at me and said, Les." At this point, Sutton walked away while Randall continued talking.[32] While denying he said the company would close its doors if the company went union or had any idea or suspected specific employees as being Union supporters, Randall did recall a conversation with Rosales on the Johnson's project during a portion of which Sutton was present. Randall admitted beginning his conversation with Rosales by asking the latter ". . . what he knew about the Union,"[33] and, after Rosales denied knowing anything, " what I said was that by paying Union wages and the Union benefits . . . we had to raise our margins by 25 percent. It would take us t of the current agriculture market that we work in. Someone coming in from out of town would eat our lunch for us."

The consolidated complaint alleges that, at its Johnson's Fertilizer project, Randall, on behalf of Respondent, unlawfully interrogated an employee regarding what he knew about the Union, threatened employees that Respondent would have to close its doors if they selected the Union as their bargaining representative, and told employees he had a good idea who was going to union meetings. Citing *Long Beach Youth Home*, 230 NLRB 648 (1977), counsel for Respondent argues that no violations of the Act occurred because, regardless of the content and Sutton's presence, the above-described conversation was between two statutory supervisors.[34] With regard to the alleged unlawful interrogation, David Randall admitted questioning Rosales as to what the latter knew about the Union. Despite having amended the consolidated complaint during the trial to allege Randall's interrogation of Rosales as unlawful, counsel for the General Counsel failed to include any argument in her posthearing brief with regard to said conduct, which seems strange given her refusal to take any position as to Rosales' asserted status as being a statutory supervisor. In any event, I am convinced that, while Rosales may have exercised several of the Section 2(11) indicia of supervisory authority as the senior person on the Johnson's project, on other occasions, he was

[31] According to James Ravine, the superintendent responsible for the Johnson's job, while acting as the senior person on jobs for Respondent, Rosales possessed authority to hire employees without authorization. Further, as a senior person, Rosales is authorized to permit employees to leave work early and to send people home without checking first with a superintendent when weather conditions made work "counterproductive." Also, according to Ravine, Rosales uses his discretion in directing work and is authorized to discipline, without seeking permission, for safety violations and for infractions, such as drinking or fighting. David Randall testified that he only worked on the Johnson's project for a few days. As to when Rosales began to exercise his supervisory authority, according to Randall, ". . . it would occur after I left because my authority would override his while I was there." Randall conceded his was the "ultimate authority," with regard to supervisory authority, while he worked on the project.

[32] The last words, which Sutton heard Randall saying, were "that they couldn't compete at Union wages."

[33] There is no evidence that Rosales was an open and avowed union supporter or that Randall suspected him of supporting the Union.

[34] In her posthearing brief, counsel for the General Counsel declined to take a position as to the supervisory status of Rosales.

not acting as a statutory supervisor at the time of Randall's admitted conversation with him. Thus, Randall admitted that, while he worked at the Johnson's project, he was the individual who exercised final supervisory authority and that Rosales did not exercise such authority until after he (Randall) left the job. Moreover, at the time of the questioning, there is no evidence that Rosales was a known or avowed union supporter, and Respondent presented no evidence that Randall suspected him of such sympathies. In all the above circumstances, I believe that Randall's interrogation of Rosales was coercive and, therefore, in violation of Section 8(a)(1) of the Act. *Grouse Mountain Lodge,* supra.

As to the remainder of the conversation, the portion overheard by employee Sutton, the latter impressed me as being a more honest and forthright witness than Randall, and I shall rely upon Sutton's version of what Randall said. Accordingly, I find that, while speaking to Rosales, Randall warned that Respondent would probably have to close its doors if the employees selected the Union. Without doubt, Randall's warning was intended to coerce the listening employees to cease supporting the Union, and, as previously stated, the Board considers such threats of business closure to interfere with and to restrain employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act. *Hansen Aggregates Central, Inc.*, supra at 12; *Feldkamp Enterprises*, supra*; Frances House, Inc.*, supra. I further find that, later, Randall announced that he had "a good idea" of which employees were attending union meetings and, then, glanced at Sutton and said, "Les." Counsel for the General Counsel argues that Randall's comment and glance were meant to suggest to Sutton that Respondent was closely watching his activities in support of the Union and that Randall thereby unlawfully created the impression that Respondent was engaging in surveillance of Randall's protected activities. "The Board's test for determining whether an employer has created an impression of surveillance is whether the employee would reasonably assume from the statement in question the fact his union activities had been placed under surveillance. *Grouse Mountain Lodge,* supra at 1322; *Tres Estrellas de Oro*, 329 NLRB 50, 51 (1999); *United Charter Service*, 306 NLRB 150 (1992). The rationale for finding such conduct unlawful is that ". . . employees should be free to participate in union organizing campaigns without the fear that management is peering over their shoulders, taking note of which employees are participating and in what ways." *Flexsteel Industries*, 311 NLRB 257 at 257 (1993). In this regard, the Board does not require that the words, used by the employer, on their face reveal that the employer has acquired its knowledge of the employee's activities by unlawful means. *Tres Estrellas de Oro,* supra. By his comment, that Respondent had a "good idea" who was attending union meetings, Randall clearly connoted that Respondent was monitoring its employees' Union activities, and his glance and mentioning of Sutton's name patently conveyed to Sutton that Respondent specifically was aware of his activities in support of the Union. Accordingly, Randall's comment unlawfully created the impression that Respondent was engaging in surveillance of Sutton's union activities in violation of Section 8(a)(1) of the Act. *Tres Estrellas de Oro,* supra. Finally, with regard to both of the above found unfair labor practices, assuming Rosales was acting as a supervisor, within the meaning of the Act, at the time Sutton overheard Randall speaking to him, I do not believe such would insulate Respondent from its unlawful acts and conduct. Thus, the Board has held that clearly unlawful statements, uttered between supervisors or agents of an employer in the "presence and hearing" of its employees, have the effect of coercing and restraining employees in violation of Section 8(a)(1) of the Act. *GM Electrics*, 323 NLRB 125, 126 (1997); *Maywood, Inc.*, 251 NLRB 979, 981 (1980).

E. Statements made to Employees at Respondent's Riverside, Washington Project

In early February, Respondent was engaged in the construction of a Christian school building in Riverside, Washington. Johnny McBee, who worked for Respondent from 1996 through July 2002, testified that, in February prior to the election, he and another employee, Keith Hansen, were working at the school construction project "cleaning up the jobsite." According to McBee, one day in the afternoon, the job superintendent, Dave Randall, drove onto the jobsite in his pick-up truck, and "he called me and Keith over to explain about some union activity that had bee going on around Yakima at three different companies." They were speaking "in front of his truck," and Randall mentioned one company "that actually went union" and another at which employees ". . . tried to vote the union out . . . ." At this point, according to McBee, he (McBee) turned to Hansen and asked him to show Randall some material, which had been given to employees by union agents. Hansen walked away and returned with some union literature. Randall refused to examine any of the proffered documents, and, instead, ". . . asked why we wanted the Union, and I responded . . . I wanted the Union for benefits for my family and a better wage. He then told me . . . that [Respondent] would never bargain . . . ." Randall recalled an occasion at the Riverside, Washington school project when he spoke to McBee[35] and Hansen about the Union. According to Randall, he brought with him ". . . some paper work from the past cases with different companies about what happened . . . when the Union came in" and initiated a conversation with McBee and Hansen. As to what was said, Randall was able to recall nothing about the conversation but specifically denied telling them that Respondent would never bargain with the Union. While Dave Randall was not a particularly impressive witness and had little recall of the above incident, he, nevertheless, impressed me as being a more candid witness than McBee. The latter was a particularly disingenuous witness, one whom I believe fabricated most, if not all, of his testimony. In this regard, I note that not only did McBee fail to mention any of his above testimony in his pretrial affidavit but also he testified about other obviously unlawful statements

[35] As with Leonel Rosales, Respondent asserts that, while he worked for Respondent, McBee exercised the authority of a supervisor, within the meaning of Sec. 2(11) of the Act. Thus, according to Randall, McBee could effectively recommend the firing of employees and was authorized to discipline employees by sending them home. Further, he had authority to send employees home in bad weather conditions and was authorized to grant overtime to employees without first seeking permission from Randall.

made by Randall. Yet, clearly indicating their lack of confidence in his veritability, when offered the opportunity to move to amend the consolidated complaint to allege these statements as unfair labor practices, counsel for the General Counsel declined to do so. In these circumstances, as I doubt the honesty of McBee, I shall recommend the dismissal of paragraphs 8(d)(1) and (2) of the consolidated complaint.

F. Questioning of an Employee at Respondent's Office in Yakima, Washington

Employee, Ervin Hansen, was laid off by Respondent on January 25,[36] and, on the same day, the Union filed its unfair labor practice charge in Case 19–CA–27902, alleging in part that Respondent laid off Hansen and others in order to coerce its employees to vote against the Union and abandon their support for it. Respondent's president, David Green, testified that, approximately a week later, Hansen came to the company's office in Yakima, seeking work. Under questioning by counsel for the General Counsel, Green testified that he spoke to Hansen and conceded interrogating him about the unfair labor practice charge. In this regard, Green commenced their conversation, asking ". . . how did [the Union] lead you into the charge?" Then, Green showed Hansen a copy of the unfair labor practice charge and asked him ". . . what he thought of [it]?" According to Green, who admitted having no knowledge as to whether Hansen had engaged in any activities in support of the Union, Hansen responded by apologizing for having his name included among the alleged discriminates and said that he knew he had not been laid off due to any Union organizing activities and that he had requested the Union to remove his name from the unfair labor practice charge. Counsel for the General Counsel alleges that, "under the totality of the circumstances," Green's admitted interrogation of Hansen was violative of Section 8(a)(1) of the Act. I agree. Thus, Respondent does not contend that Hansen was an open and avowed supporter of the Union. Respondent's interrogation of its former employee was conducted by its highest management official, David Green, in his office and against a background of serious unfair labor practices, several of which were committed by Green. Other than Green satisfying his ego or personal interest, there does not appear to have been any legitimate purpose to the questioning of Hansen, and Green gave him no assurances that his answers would not adversely affect his chances of being recalled to work by Respondent. In these circumstances, I agree with counsel for the General Counsel that Green's interrogation of Hansen was violative of Section 8(a)(1) of the Act.

G. The Representation Election

The Union's Objections

The Union's second objection[37] to conduct, by Respondent, which allegedly affected the results of the February 15 representation election, is that "the notices of election were not posted in places reasonably accessible to the voters. The Notices were not posted on the jobsites." In this regard, Section 103.20 of the Board's Rules and Regulations provides that "Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election." Clearly, the Union was aware that Respondent's employees work on jobsites away from the Yakima, Washington area; nevertheless, the stipulated election agreement, which was executed by the parties and approved by the Regional Director of Region 19 on January 22, is silent as to the locations where the election notices were to be posted, stating only that the notices of election shall be posted "in conspicuous places. Respondent conceded,[38] and the record establishes, that none of the notices of election were posted at its jobsites in Washington or Oregon, and several witnesses testified that no election notices were posted at Respondent's Magic Metals jobsite or at its jobsite in Ione, Oregon.[39] With regard to where the election notices were posted, Catherine Paterson-Lee, Respondent's bookkeeper, testified that these were posted at Respondent's office on the doors of a cabinet behind her desk and on a bulletin board in the kitchen of Respondent's office for the 3 days prior to the day of the election. However, there is no record evidence that, during the 3-day period prior to the election on February 15, any voting unit employees ever saw the election notices. In this regard, the record establishes that employees, who are working on jobsites outside of Yakima, normally have no occasion to visit Respondent's office[40] and that paychecks are usually distributed to employees on their jobsites by Respondent's foremen or superintendents. Peterson-Lee testified, without contradiction, that, in the absence of employees actually visiting the office in order to view the official notices of election and to ensure that its voting unit employees were aware of the time and date of the representation election, in the week before the election, Respondent placed typewritten notices, which set forth information regarding the election, in its voting unit employees' paycheck envelopes, and attempted to telephone each of said employees, listed on the election eligibility list. Regarding the telephone calls, she conceded that some employees' telephones had been disconnected and others did not answer.

The Union argues that the term "conspicuous places," as used in Section 103.20, should be interpreted as requiring the

[36] Of course, if Green is correct as to the date of Hansen's layoff, the alleged conversation between Randall, McBee and Hansen at Respondent's jobsite in Riverside, Washington could not have occurred in February.

[37] As the Union presented no evidence as to its other objection, I shall recommend that it be dismissed.

[38] I fail to understand why the Acting Regional Director set this objection for hearing. The Board has held that a hearing on objections is held only where there are substantial material issues of fact. *Speakman Electric*, 307 NLRB 1441 (1992).

[39] While there is record evidence that "hard hats required" notices are posted at jobsites, apparently, there are no bulletin boards on jobsites on which employee notices are posted.

[40] While counsel for the General Counsel points out that the Magic Metals jobsite was in Union Gap and Union Gap is located only 3 miles from Yakima, there is no evidence that any of Respondent's employees, who worked at the Magic Metal's jobsite, had any reason to visit Respondent's office prior to the election. Put another way, no matter the distance from Respondent's jobsites to its office, the issue is whether any employee had reason to be at the office in order to have access to the election notices.

posted notices be "reasonably accessible" to the voting unit employees and that such an interpretation would have required Respondent to have posted copies of the election notices on each of its jobsites.[41] I agree. Initially, I note that, in 1987, when it adopted Section 103.20, codifying that the official election notices must be posted, by employers, in "conspicuous places," the Board rejected a suggestion that it define the word "conspicuous," stating that it ". . . saw no need to describe the term or limit the number of places that could be called "conspicuous." Further, prior to the adoption of Section 102.30, while it does not appear that the Board ever established rules specifying exact locations in particular industries where election notices must be posted, it did sustain objections to elections based upon a failure to post in conspicuous places. Thus, in *Kilgore Corp.*, 203 NLRB 118, 118–119 (1973), enf. denied 510 F.2d 1165 (6th Cir. 1975), the Board sustained an objection to the conduct of a representation election, holding that the employer did not give employees "sufficient advance notice of the election," in part, because, notwithstanding the instruction to post notices in conspicuous locations, none of the election notices were posted in the areas, which housed employees' workstations and one was posted in the personnel office, a location "not routinely visited by employees . . . ." Likewise, in *Thermalloy Corp.*, 233 NLRB 428 (1977), in which the employer's facility consisted of two buildings "not within walking distance of each other," the Board upheld an objection to the conduct of an election inasmuch as, despite the admonition to post election notices in conspicuous places, the employer posted none of the election notices in one of its buildings.

I am convinced that the real issue is not the locations of the posted election notices but, rather, whether Respondent's employees were afforded access to them. In this regard, notwithstanding that its employees worked on jobsites and had no occasion to visit its office, Respondent only posted the official notices of election at its office. In this manner, Respondent virtually ensured that none of its voting unit employees would have access to an official notice of election during the mandated 72- hour posting period. Respondent's counsel is correct that the Board has recently overruled objections to elections based upon assertions that the notices of election were not accessible to employees during the entire 3-day notice posting period. In *Penske Dedicated Logistics*, 320 NLRB 373 (1995), the Board concluded that the employer had complied with the posting requirements of Section 103.20 notwithstanding that, while the election notices were posted for 3 full working days, which encompassed a weekend, 36 percent of the voting unit were regular part-time employees, who, while they worked on the weekends, were denied access to the room in which the notices were posted on the Sunday prior to the election. Also, in *Cleveland Indians Baseball Co.*, 333 NLRB 242 at 579–580 (2001), in which, for an election to be conducted on August 18, the employer posted the notices of election on August 8 and the voting unit employees worked on that day and on August 9th but did not work on August 10 through 17 because the baseball team was on a road trip, the petitioner argued that the employees were denied access to the election notices. The Board rejected the petitioner's objection, based upon lack of access, noting that the employer's conduct had conformed to the language of Section 103.20. However, contrary to counsel, both of these decisions are clearly distinguishable; for, in contrast to the instant circumstances, the voting unit employees in *Penske* and in *Cleveland Indians* enjoyed some, although limited, access to the election notices. Of course, given their work circumstances, none of Respondent's voting unit employees had any access to the Board's election notices.[42] As the Board noted in *Kilgore Corp.*, supra, affording employees access to view the official notices of election is of crucial import to the election process, for, besides containing crucial information regarding the election, the official notices contain clear statements of the rights of employees under the Act. Finally, while counsel for Respondent points to the stipulated election agreement, into which the parties entered on or about January 22, and notes that the Union raised no objection to posting based upon the employees location of work, the agreement does require posting in "conspicuous places and usual posting places easily accessible to the voters," and the burden was upon Respondent to ensure such was done. It would be placing form over substance to hold that notices, posted at Respondent's office in Yakima, were "easily accessible" to its employees, who were working on its jobsites and had no need to travel to Respondent's office. In the foregoing circumstances, I find merit to the Union's second objection.[43]

The various provisions of the Union's fifth objection to the conduct of the secret ballot election are basically identical to the various allegations of the consolidated complaint. However, while I have found merit to all but one of the allegations of the consolidated complaint, I cannot find, with certainty, that all of said acts and conduct occurred during the critical period—January 8 through February 15. Thus, while I have found that, at Respondent's Johnson's Fertilizer jobsite, David Randall interrogated Leonel Rosales regarding his knowledge about the Union, threatened employees with closure of the business if they selected the Union as their bargaining representative, and created the impression in the minds of employees that Respondent has been engaged in surveillance of their activities in support of the Union and concluded that said acts and conduct were violative of Section 8(a)(1) of the Act, Henry Sutton only was able to place Randall's conduct as occurring in the first week of January. This is not sufficient to establish that the said acts occurred on or subsequent to January 8, the day on which the Union filed its representation petition in Case 19–

[41] In asserting this legal position at the hearing, the Union's representative said that he had case support for it and would provide such to me in his posthearing brief. Unfortunately, the Union failed to file a brief.

[42] Respondent obviously recognized the deficiency inherent in posting the election notices only at its office when it went through the effort of placing letters, informing employees of the time and date of the election, in the employees' pay envelopes and of telephoning employees in said regard.

[43] While there may have been no "usual posting places" at any of Respondent's jobsites, it is inconceivable that no posting areas existed at any of said jobsites. In this regard, I note that there is record evidence of the posting of signs, requiring the use of hard hats, at the jobsites.

RC–14200. Likewise, James Ravine admitted interrogating employee, Jorge Ibarra, on Respondent's dairy project in Ione, Oregon, and I concluded that this act violated Section 8(a)(1) of the Act.. However, as the record only establishes this as occurring in "around January," such is insufficient to warrant the conclusion that Ravine's act occurred on or subsequent to January 8. Accordingly, I conclude that the portions of the Union's fifth objection, which allege these acts and conduct, are without merit.[44] Other than as noted above, as they track allegations of the consolidated complaint, which I have found to constitute serious unfair labor practices, I find the remaining portions of the Union's fifth objection and the Union's second objection to be meritorious. In these circumstances, I further find that Respondent's acts and conduct were sufficiently serious to have destroyed the laboratory conditions, which are required for the unfettered selection of a bargaining representative, and to warrant setting aside the election. Accordingly, I remand Case 19–RC–14200 to the Regional Director of Region 19 for the purpose of conducting a new election at such time as he deems circumstances permit the free choice of a bargaining representative.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By, at its Magic Metals jobsite in Union Gap, Washington, through David Randall, prohibiting its employees from displaying union stickers on their hard hats or personal vehicles and by threatening them with termination if they engaged in such activities, Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act.

4. By, at its Magic Metals jobsite in Union Gap, Washington, through David Randall, prohibiting its employees from engaging in any activities in support of the Union, Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act.

5. By, at its Magic Metals jobsite in Union Gap, Washington, through Neil Monoian, suggesting its employees that, if they wanted to go work for the Union, they should go get a union job, Respondent coerced its employees and, in effect, threatened its employees with termination, thereby engaging acts and conduct violative of Section 8(a)(1) of the Act.

6. By, at its Magic Metals jobsite in Union Gap, Washington, through David Green, interrogating its employees as to why they wanted the Union, threatening its employees with business closure if they continued their support for the Union, suggesting to its employees that, if they wanted to work for a union company, they should seek work elsewhere and, in effect, threatening them with termination, and, by making unsupported predictions of an inability to compete, threatening its employees with loss of their jobs because or their support for the Union, Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act.

7. By, at its Ione, Oregon jobsite, through Jose Betancourt, prohibiting its employees from displaying union stickers on their clothing while working or on their vehicles, parked on the jobsite, and threatening them with discharge if they engaged in such activities and threatening its employees with business closure if they selected the Union as their bargaining representative, Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act.

8. By, at its Ione, Oregon jobsite, through James Ravine, interrogating employees regarding their union activities and what the Union was offering to the employees, making an unsupported prediction about future work opportunities over which Respondent would have absolute control and, thereby, threatening employees with job loss because of their support for the Union, denigrating the skill level of most of Respondent's current work force and suggesting that, if they selected the Union as their bargaining representative, it could not justify paying them at the journeyman wage rate and would replace them with more experienced journeymen from the hiring hall and, thereby, threatening its employees with job loss based upon a decision solely within its control, and threatening its employees with business closure, Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act.

9. By, at its Othello, Washington jobsite, through David Randall, interrogating its employees regarding their knowledge about the Union, threatening its employees with business closure if the employees selected the Union as their bargaining representative, and creating in the minds of its employees the impression it was engaging in surveillance of their union activities, Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act.

10. By, at its office in Yakima, Washington, through David Green, interrogating a former employee regarding the inclusion of his name, as an alleged discriminatee, in an unfair labor practice charge, filed by the Union, Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act..

11. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

12. Respondent has not otherwise violated the Act as alleged in the consolidated complaint.

THE REMEDY

I have found that Respondent engaged in serious unfair labor practices violative of Section 8(a)(1) of the Act. Therefore, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act, including the posting of a notice, delineating for its employees its acts of misconduct, and mailing said notice to each of its employees.[45]

[44] I found that several of Superintendent Ravine's comments to Respondent's employees during his lunchtime meeting with them at the Ione jobsite were violative of Sec. 8(a)(1) of the Act. While these are dated as occurring "in January," the content of the meeting convinces me that Ravine uttered his remarks during the critical period in an effort to coerce the listening employees to vote against the Union in the representation election. Therefore, I find merit to the portions of the Union's fifth objection in these regards.

[45] In agreement with counsel for the General Counsel, I shall require that copies of the Notice to Employees be in both English and Spanish.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[46]

ORDER

Respondent, Systems West LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees at various jobsites as to their union activities, their knowledge about the Union, why they want the Union, and what the Union was offering to them;

(b) Interrogating former employees regarding their inclusion as alleged discriminates in unfair labor practice charges filed by the Union;

(c) Prohibiting its employees from displaying union stickers on their hard hats or clothing on its jobsites and from displaying union stickers on their vehicles parked on its jobsites;

(d) Prohibiting its employees from engaging in activities in support of the Union on its jobsites;

(e) Threatening its employees with termination if they display union stickers on their hard hats or vehicles on its various jobsites;

(f) Suggesting to its employees, and, in effect, threatening them with discharge, that, if they want to work for a Union company, they should seek employment elsewhere;

(g) Threatening its employees with closure of the business if they continued to support the Union or selected the Union as their bargaining representative;

(h) Threatening its employees with loss of jobs by making unsubstantiated predictions of inability to compete, future work opportunities, or occurrences within its control if they continued to support the Union or selected the Union as their bargaining representative;

(i) Creating, in the minds of its employees, the impression that it has been engaging in surveillance of their activities in support of the Union;

(j) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Within 14 days after service by the Region, post at its office facility in Yakima, Washington and at each of its current jobsites in the States of Washington and Oregon, copies of the attached notice (in English and in Spanish) marked "Appendix."[47] Copies of the notice, on forms provided by the Regional Director for Region [*number*], after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 9, 2002.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the election held on February 15, 2002 be set aside and the case be remanded to the Regional Director of Region 19 to conduct a new election when he deems the circumstances permit the free choice of a bargaining representative.

Date: April 25, 2003

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT interrogate our employees at our jobsites as their activities in support of Pacific Northwest Regional Council of Carpenters, Local 770 (the Union), their knowledge about the Union, why they want representation by the Union, and what offered to them.

WE WILL NOT interrogate our former employees regarding their inclusion as alleged discriminates in unfair labor practice charges, filed by the Union.

WE WILL NOT prohibit our employees from displaying union stickers on their hard hats or clothing on our jobsites or from displaying union stickers on their vehicles, which are parked at our jobsites.

WE WILL NOT prohibit our employees from engaging in activities in support of the Union on our jobsites.

In addition, I shall require that Respondent post copies of the Notice at its office and at each of its current jobsites. Given my posting requirement, I do not believe it necessary that Respondent also mail copies of the notice to each of its current employees.

[46] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[47] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT threaten our employees with discharge if they display union stickers on their hard hats or vehicles at our jobsites.

WE WILL NOT suggest to our employees and, in effect, threaten them with discharge, that, if they want to work for a union company, they should seek employment elsewhere.

WE WILL NOT threaten our employees with closure of the business if they continue to support the Union or select the Union as their bargaining representative.

WE WILL NOT threaten our employees with loss of their jobs by making unsubstantiated predictions of inability to compete, lack of future job opportunities, or occurrences within its control if they continue their support for the Union or select the Union as their bargaining representative.

WE WILL NOT create in the minds of our employees the impression that we are engaging in surveillance of their activities in support of the Union.

WE WILL NOT, in any manner, interfere with, coerce, or restrain our employees in the exercise of the rights guaranteed to them by Section 7 of the National Labor Relations Act.